

**From:** boltzs@alfalfa.ifea.rl.af.mil@inetgw  
**To:** Microsoft ATR  
**Date:** 1/24/02 11:21am  
**Subject:** Microsoft Settlement

Dear Sir/Madam,

This letter presents my response to the revised proposed Final Judgement to resolve the United States' civil antitrust case against Microsoft, which is currently up for public review. I am a citizen of the United States, and a resident of rome, ny.

#### I. Critique of Proposed Final Judgement

The proposed Final Judgement that the US and Microsoft agreed to on November 6th appears to have the best intentions, and addresses many of the major issues raised by the case. Unfortunately, I feel that it falls short of being an effective remedy.

I agree with many of the points in the following critique of the proposed final judgement, and it is more complete than my own statement will be.

Please review the statement on the antitrustinstitute.org website at:

<http://www.antitrustinstitute.org/recent/149.cfm>

There is much to consider in that document, the points in the proposed final remedy that I consider most important to review are that:

1) it makes no attempt to address "ill-gotten gains" garnered by microsoft through its anticompetitive practices. This is a serious shortcoming because the company's illegal tactics have placed it in a very advantageous position in the industry. In order to make anticompetitive behavior unprofitable, there must be substantive punishment that reduces

those gains.

2) the anti-retaliatory clause is insufficient. Section 3.A.1 specifies that Microsoft shall not retaliate against an OEM for "developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware;".

Section 6.L defines Microsoft Platform Software as "(i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product."

As I read this clause, it still allows retaliation against OEM's for developing, distributing, promoting, using, selling, or licensing, software that competes with other Non-Platform Microsoft Products, such as Office, .Net, and other applications. This opens an important window for Microsoft to continue its anticompetitive practices.

3) the api disclosure provision in section 3.D is impossible to enforce.

The only way to ensure that Microsoft isn't hiding undocumented API's is to audit the source code. No body with sufficient manpower has been appointed to do this. A more appropriate solution would be to require disclosure to API's AND source to ISVs, IHVs, IAPs, ICPs, and OEMs. They could then audit suspect code themselves, and present an informed complaint to the Technical Committee, which could verify and investigate.

4) The only punitive measure specified to discourage Microsoft from non-compliance is a 2 year extension of the terms of the judgement. If Microsoft is not complying with the judgement anyway, this is an extraordinarily ineffective punishment.

## II. Support for Plaintiff Litigating States' Remedial Proposals

(December 7, 2001)

The proposal filed by the state on December 7th, 2001 is a much more complete remedy. The proposal is available on the web at:

[http://www.naag.org/features/microsoft/ms-remedy\\_filing.pdf](http://www.naag.org/features/microsoft/ms-remedy_filing.pdf)

1) It addresses the Microsoft's ill-gotten gains in section H by Open

Sourcing the code to Internet Explorer. The Court's Findings of Fact,

issued on 11/5/99, state that Microsoft successfully used its monopoly

power to increase the market share of Internet Explorer.

These findings

of fact can be found on the US Department of Justice webpage at:

<http://www.usdoj.gov/atr/cases/f3800/msjudgex.htm#vh>

By Open Sourcing the code to Internet Explorer, Microsoft is deprived of

the gains associated with their anti-competitive behavior.

Additionally,

consumers and the entire computing industry benefit by augmenting the

publically available software infrastructure of the internet.

2) Section E offers a stronger anti-retaliatory clause which covers all

microsoft products, and not just Platform Products.

3) Section C offers an API Disclosure provision that is enforceable. ISV's,

OEM's, etc are provided access to source as well as API documentation.

This will allow them to inspect suspicious code and present well informed

complaints to the Technical Committee.

4) Section O offers excellent punitive measures in the event that

Microsoft does not comply with the Judgement.

Additionally, section L of this document provides excellent

protection  
against Microsoft co-opting and breaking standards  
compatibility, as the  
findings of fact show it did with the JAVA standard. This  
topic is not  
addressed in the Proposed Final Judgement.

### III. General suggestions

Unbundling microsoft middleware/products/services is a  
superior solution  
than requiring alternatives be bundled as well. The latter  
has the effect  
of favoring a small number of well established  
middleware/products/services  
by creating large barriers of entry to new  
middleware/products/services  
that are not included in the OS distribution.

Mandating that Microsoft offer licenses to third-party  
companies to port  
its applications to alternative Operating Systems is a  
superior solution  
than requiring that Microsoft maintain ports of particular  
products to  
particular OS's. Determining whether a port of a given  
application to a  
given platform can be profitable is difficult and should be  
decided by  
the market. Microsoft should not be allowed to lock-out  
existing markets  
by not porting applications and not allowing others to do so.  
However, is  
it not feasible to expect Microsoft to port every application  
to every  
platform. There is not always a demand.

There should be a reward in the event that microsoft makes  
every effort  
in good faith to comply with the judgement. Perhaps make the  
judgement  
applicable for 10 years, with an option to terminate the  
measures in 5 if  
microsoft makes efforts in good faith to comply.

### IV. Relevant Links

1) The Proposed Final Judgement (11/6/2001)  
<http://www.usdoj.gov/atr/cases/f9400/9495.htm>

2) The commentary on the Proposed Final Judgement at  
antitrustinstitute.org

<http://www.antitrustinstitute.org/recent/149.cfm>

3) Plaintiff Litigating States' Remedial Proposals  
(12/7/2001)

[http://www.naag.org/features/microsoft/ms-remedy\\_filing.pdf](http://www.naag.org/features/microsoft/ms-remedy_filing.pdf)

V. Closing

Thank you for your time and consideration. I hope an  
appropriate set of  
remedial measures can be decided upon soon.

Scott Boltz